

September 2014

## Student Lounge

This feature emphasizes common student experiences or important developments at local universities.



### A Few Comments on Social Media and Texting

**Matthew Lab**

**Assistant Director, Career and Professional Development Office  
California Western School of Law**

Any attorney who has been in practice for more than 10 to 15 years can remember the time when, if you needed to communicate with a client or opposing counsel, you did so with a telephone call, fax or letter (or a combination thereof). Times certainly have changed. This became apparent to me last year when I needed to speak to a client but my numerous voice messages and emails went unanswered. Despite my concern about the informality, I sent the client a text, which generated a reply in less than a minute. Today, whether I like it or not, I have some clients with whom I can only regularly communicate via texts. It is clear that social media and access to a variety of electronic means of communication will and shall remain a fixture within our legal community. Although positive, this change presents us with some challenges as well as professional and ethical dilemmas of which a few stand out to me as potentially problematic for law students and lawyers.

#### Venting on Social Media

Whether it was a court appearance that didn't go well or simply a tough day at the office, it is never a good idea to vent about it on social media. Because the Internet is a public domain, anything that you post is potentially visible to anyone who might be watching. Once something is posted on the Internet, you lose control over where it goes and who can see it. It should come as no surprise that employers conduct Google and social media searches on prospective job candidates, which would include Facebook and LinkedIn accounts, but also your Twitter account, blog posts, Flickr pictures, etc. Anything you post may also be visible to active and potential clients, employers, colleagues, adversaries, judges and the State Bar.

There have been numerous recent incidents across the country involving attorneys posting inappropriate things related to pending matters, including judges and their own clients. A recent example involved an Assistant Public Defender in Florida, who posted a photo of her client's leopard-print underwear on her personal Facebook page. According to The Miami Herald, the photo was taken while a bailiff inspected a fresh set of clothing that the defendant's family had brought for him to wear during his murder trial. The Assistant Public Defender posted the photo of the briefs to Facebook along with the comment that her client's family believed that the leopard-print underwear was "proper attire for trial." The incident evidently came to light when someone in her Facebook network reported it to the judge. The judge declared a mistrial and the Assistant Public Defender was fired.

Admittedly, the above example is on the extreme side of the spectrum of things not to post on social media. Most law students and attorneys would never do something so imprudent as posting a photo of their client's underwear on Facebook or tweeting inflammatory remarks about a pending case but may inadvertently commit lesser malfeasance by posting comments about clients or pending matters, i.e., "Working late AGAIN on an MSJ. Ugh." While this text seems innocuous, I doubt it would be well received by the employer. Or worse, "Working late AGAIN on an MSJ for a rude and unappreciative client. Ugh." would likely get you fired.

Another example could be where you post in the comments section of an article about a recent court ruling that you describe as "idiotic" or something similar. Since comment sections generally require a log-in and are often linked to Facebook or LinkedIn, one should be very cautious about posting anything in this type of forum.

A good rule to follow is to assume that all of your social media posts will be reviewed by your mother, clients, employers, colleagues, adversaries and judges. That tends to work for me.

### **Disclosure of Confidential Information**

Although it is safe to say that all lawyers and law students know of their duty under California Rules of Professional Conduct ("RPC") 3-100 not to disclose confidential information relating to their clients, in my opinion, the informal nature of various social media platforms may lure some participants into believing that the rules may be different for online communication, especially if posted anonymously or without revealing the client identity. They are not. A simple tweet like "Big client filing BK instead of fighting. #nomorelatenites!" could be very problematic even though the client is not expressly identified. Not only are you providing enough information (i.e., big client involved in active litigation), you are disclosing confidential information that could harm the client (i.e., providing plaintiff advanced warning to prepare a nondischargeability complaint).

A thorough examination of the application of RPC 3-100 to the myriad of online communications is beyond the scope of this article. While I am certain that there may be some exceptions, it is best to assume that all confidential information may not be disclosed in social media (or otherwise) without your client's informed consent. The best practice is to simply avoid posting any client information without the prior express written consent of your client.

### **Texting; Textisms and Professional Correspondence**

It is hard to imagine that the prevalence of texting in our daily personal communications will not influence our professional communication (i.e., email and document format). In many ways, the impact may be positive. For example, the method is quick, efficient and, given the character limitation, may improve our ability to communicate succinctly in other formats. That said, it is important to remember that texting and professional correspondence serve different purposes and should be treated as separate. As such, one should never use textisms of any sort in professional correspondence, even if you are operating under a word count limitation (unless you want the reader to return the correspondence with "TLDR" written across it). As to the question of when texting is an appropriate method of communication, my best advice is to reserve it for brief, informal communication. Always use correct grammar and punctuation when you text with a client or employer. Follow the lead of your employer; if he or she texts you, you can text a reply. And never quit your job via text!